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NEW DELHI, FRIDAY, MARCH 6, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th March 1953

S.R.O. 461.—WHEREAS the election of Shri A. K. Masilamoney Chetty of 31, Vengappa Chetty Street, Vellore and Shri H. M. Jagannatham of 9/2 Police Station Street, Kamisery Bazaar, Vellore, North Arcot District as members of the Madras Legislative Assembly from the Vellore constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri R. Radhakrishnan No 20 Kalas Valayalkara Street, Vellore, North Arcot District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VELLORE

PRESENT:

Sri M. Anantanarayanan, I.C.S.—Chairman.

Sri P. Ramakrishnan, I.C.S.—Judicial-Member.

AND

Sri B. V. Viswanatha Aiyar, M.A., B.L.—Advocate-Member.

Wednesday, the eighteenth day of February, one thousand nine hundred and fifty-three

ELECTION PETITION No. 50 OF 1952

R. Radhakrishnan—Petitioner.

versus

1. A. K. Masilamani Chettiar.
2. H. M. Jagannathan.
3. T. Abdul Wahid Sahib.
4. M. Adimoolam.
5. A. Deivasigamany.
6. K. V. Govindaswamy.

7. A. Kuppuswamy Mudaliar.
8. Moorthy M.
9. T. Srinivasa Mudaliar.
10. K. R. Sundaram.
11. G. S. Srinivasan (Returning Officer, Vellore Constituency).
12. Dr. Ramachandran.
13. Natesa Mudaliar.
14. Annamalai Mudaliar.
15. Ramaswamy—*Respondents.*

This is an Election Petition under Section 81 of the Act XLIII of 1950 and Act XLIII of 1951 and under Rule 119(b) of the Representation of the People Rules 1951, against one Masilamani Chettiar and 14 others for a declaration that the Election of the first respondent to the Vellore dual constituency for Madras Legislative Assembly is void, and for a declaration that the petitioner had been duly elected or for a declaration that the Election is wholly void.

This Election Petition coming on for hearing before the Tribunal on the 28th January, 6th, 7th, 13th and 14th days of February, 1953, in the presence of Messrs. N. K. Mohanrangam Pillay, N. Venugopal Nayagar, M.A. Rajagopal Aiyar and V. R. Tiruvengadam, Advocates for the Petitioner, of Messrs. D. Krishnaswami Aiyar and A. K. Srinivasavaradan and K. Rajeswaran, Advocates for the 1st respondent, of Sri P. S. Sundaresa Sastriar, Advocate, for the second respondent, of Sri N. K. Vijayaraghavan, Government Pleader representing the 11th respondent (State), and the rest of the respondents being absent, and having stood over till this day for consideration, the Tribunal delivered the following:

JUDGMENT

The petitioner, R. Radhakrishnan, was one of the duly nominated candidates who stood for election to the Madras State Legislative Assembly from the Vellore dual constituency, in the recent elections. The first respondent, A. K. Masilar Chettiar, was declared duly elected. 23422 votes were found polled in favour of respondent, while 22701 votes had been cast in favour of the petitioner, re- first in a majority of 721 votes in favour of the first respondent as against his rival the petitioner. The petitioner attacked the validity of the election on certain specified grounds, which can be summarised under the following heads:

- (i) At the time of the counting of votes more than 9000 votes, cast in favour of the petitioner were rejected as invalid whereas only 1925 votes were so rejected for the first respondent and the rejections were improper and irregular.
- (ii) The rules governing the counting of votes by election provided for the opening of only one ballot box at a time for the purpose of counting. But the Returning Officer permitted as many as 72 boxes to be opened at a time employing about 70 to 80 counting clerks for the purpose crowded into a single hall, and went on increasing their number as the counting was proceeding, with the result that over 1500 ballot boxes had to be opened and counted during the 3 days that the counting went on commencing from 9th January 1952. This procedure led to confusion in the improper rejection of votes and in the mixing of rejected votes of one candidate with the polled votes, thus irregularly reducing the valid number of votes to the detriment of the other.
- (iii) The constituency being a dual one, each voter was given two ballot papers. Such ballot papers issued in one polling station or in one booth were found in the ballot boxes pertaining to another station or polling booth and an instance of this could be found in booth No. 126 of Virupakshapuram.
- (iv) In Vellore-Kasba polling booth No. 138, dead voters and absentees polled and challenge was impracticable and impossible, as there were many gosha residents in that area. Ballot papers were issued in the same area without issuing simultaneously identification chits which facilitated casting of votes for dead persons and absentees.
- (v) According to the rules ballot boxes had to be arranged in alphabetical order based on the order in the published list of valid nominations. The alphabetical order had not been followed, with the result that two Congress boxes of two Congress candidates were

arranged side by side whereas if the correct alphabetical order had been adopted, the boxes of the 7th respondent Kuppusami Mudaliar ought to have been placed between the boxes of the two Congress candidates.

- (vi) There was no distinctive mark on the boxes to differentiate between general and reserved candidates, in accordance with rules and directions so far as respondents 4 and 8 were concerned.
- (vii) At several polling stations, of which Edayansathu, Periyankuppam and Town Hall Vellore were specified, the polling commenced at 9 A.M. instead of at 7 A.M.
- (viii) In booth Nos. 142 and 143 of Saidapet Polling station Parliamentary ballot papers were wrongly issued to voters for the Assembly. All such papers were taken into account for the Congress candidates but rejected as invalid in respect of other candidates including the petitioner.

2. For the reasons aforesaid the petitioner prayed (1) for a declaration that the election of the returned candidate was void; (2) for a declaration that the petitioner had been duly elected or for a declaration that the election was wholly void.

3. The 11th respondent was the Returning Officer of the constituency, the Revenue Divisional Officer, Tirupattur. He is only a formal party. The other respondents were the duly nominated candidates. Respondents 3 to 5 and respondents 7 to 10 were *ex parte*, and 6th respondent filed no objections. The first respondent filed a counter and the 2nd respondent sailed with him.

4. First respondent in his counter alleged thus: All the duly nominated candidates had not been joined as parties to the application. This omission, it may be observed, was rectified by amendment to the petition by which the Court permitted the petitioner to implead the duly nominated candidates as parties. The first respondent denied the allegations about the improper conduct of the election and also about the impropriety in the counting of votes. No written objections were delivered to the Returning Officer either by the petitioner or anybody else on his behalf at the time of counting of votes. There was no irregular or improper rejection of the ballot papers. The rejection of the ballot papers by the Returning Officer became final and could not be questioned by the Tribunal. The respondent then specifically denied the various allegations mentioned in paragraph 2 above, and put the petitioner to strict proof of the allegations.

5. The following issues were framed:

- (1) Is the election of the first respondent rendered invalid for reasons of improper reception of votes, improper rejection of votes, non-compliance with the provisions of the Representation of the People Act, 1951, and the Rules made thereunder, and allied reasons furnished in the petition, and if so, whether the election ought to be set aside?
- (2) Whether by reason of the same grounds set forth in issue 1 above, the petitioner should be declared duly elected instead of the first respondent?
- (3) Whether by reason of any of the grounds already referred to, the Tribunal should declare the election as void?
- (4) Did not the petitioner submit his return of election expenses by the date of the presentation of this petition, and if so, whether the petitioner is disentitled to proceed with the petition on that account?

6. During the pendency of the petition, the petitioner filed an application for the appointment of a commissioner for opening the ballot boxes and scrutinising the ballot papers in order to substantiate his allegations about improper counting and improper rejection of votes. But we consider it better to have the scrutiny made by one of ourselves, instead of entrusting the task to a commissioner. All of us sat on the 13th December in the Chambers of the District Judge and in the presence of the parties and their Counsel. The ballot boxes were opened and the ballot papers were submitted to a preliminary scrutiny, and we agreed upon the lines on which further scrutiny should be conducted, and thereafter the Chairman continued the scrutiny on the 15th and 16th December in the presence of the candidates and their pleaders. The result of the scrutiny has been embodied

in a separate order. The correctness of the observations recorded therein has not been disputed at the time of the hearing.

7. The grounds of attack summarised in paragraph 1 can be considered under two groups. The first group covers the grounds (i), (ii) and (iii) dealing with the counting of votes which took place between 9th and 11th January 1952 for 3 days. The second group comprises grounds of attack (iv) to (vii) relating to irregularities at the time of the polling, and I shall take up this last-mentioned group first before considering the first group.

8. *Ground of attack No. (iv).*—This ground was not pressed at the hearing. The petitioner, who gave evidence as P.W. 1, did not refer to it.

9. *Ground of attack No. (v).*—Under rule 21(3) of the rules framed under the Representation of the People Act, the ballot boxes have to be placed at the polling booth side by side, in the same order in which the names of the candidates to whom such boxes had been allotted, appeared, in the list of validly nominated candidates at the election, published under rule 11. Under rule 10(2), the list of valid nominations has to follow the alphabetical order of the surnames in the case of candidates who have surnames, and of the proper names of those candidates who do not have surnames. The petitioner has not been able to show how the alphabetical order was not adopted in publishing the list of valid nominations. In this evidence, he admitted categorically that in the polling booths the boxes were arranged in the order of names in the Gazette Notification, and he admitted that he did not object in writing to the order published in the Gazette Notification. His complaint according to his evidence, was that as the boxes of Congress candidates were kept side by side, illiterate voters might have been deceived into putting the ballot papers into the two adjacent boxes, without understanding the symbols properly. The petitioner was assigned the symbol of "Two bicycles." The object of providing such visual symbols, was primarily to help illiterate voters to identify the boxes of the candidates for whom they want to cast their votes. Since the petitioner had been given an unmistakable symbol, it is difficult to conceive of a situation where voters who wanted to cast their votes for him, could have been misled by any particular order in which boxes were arranged at the polling booths. The time for objecting to such an arrangement, was soon after the publication of the list of valid nominations, and when the petitioner had allowed that list to remain unchallenged, it would not be proper for him to attack the election on the ground that the order of the boxes in the polling booths should have been made different. We consider that the ground of attack No. (v) is not sustained.

10. *Ground of attack No. (vi).*—As far as one can gather, the petitioner's grievance seems to be that to distinguish the boxes of the reserved candidates, in addition to the symbol, a circle should also have been drawn round the symbol, and since such a circle was not drawn round the symbol in the case of respondents 4 and 8, there was prejudice to him. We are unable to understand the point of this objection. Under rule 10(1), symbols are assigned to each candidate by the Returning Officer after considering the choice expressed by the candidates. There is provision for lots being cast when more than one candidate express preference for the same symbol. But the ultimate decision for the assigning of a symbol has to be given by the Returning Officer, and his decision is final. As long as the symbol thus assigned to the candidate is sufficiently distinctive, so as to leave no difficulty on the part of a voter in identifying it, any confusion on account of the absence of a circle round the design and so on, appears to be pointless. This ground fails.

11. *Ground No. (vii).*—The petition alleged that polling commenced 2 hours after the notified time of 7 A.M. in 3 different places Edayansathu, Periyankuppam and Vellore Town Hall. It did not specify any other polling stations in this regard. In his evidence the petitioner said that at the above 3 polling stations the booths were opened after a delay of 1 or $1\frac{1}{2}$ hours. His agents told him that some voters who had come to vote for him stood in queues, and as the booths did not open they went away and never returned. His information was that the polling ended at the usual hour (5 P.M.) and was not prolonged. In cross-examination he said that he went to Edayansathu at 2 P.M. but he did not go to Periyankuppam at all, and he went to the Town Hall booth at 9 A.M. He derived his knowledge of the late opening from his agents. He could not give the names of his agents, at the above booths, and in his evidence he mentioned the name of the agent for Vellore Kasba booth, but this is not one of the booths mentioned in the petition. However he examined P.W. 3 who appears to be an omnibus witness very much interested in the petitioner, and selected for the purpose of mentioning about the facts specified in ground No. (vii). On the day

of election, the witness was working for the petitioner and had received an authorisation from him to visit booths on his behalf. He came to Vellore Town Hall at 8 A.M. and found voters standing in a queue, the booth not being open. Then he immediately sent to Edayansathu, reaching it at 8-55 A.M. and found that the polling had not commenced. Even benches had not been arranged, and polling actually commenced at 9-15 A.M. He could not state when the polling closed at the Vellore Town Hall and Edayansathu booths which he visited. He did not lodge any complaint about the late opening of the booths. He told the petitioner at 4 P.M. but the petitioner never complained to anyone in authority. Even in the complaint which the petitioner gave to the Returning Officer on 11th January 1952 after the counting was over, he never mentioned about the late opening of the booths. Under Section 56 of the Act, the appropriate authority has to fix the hours during which the poll will be taken and publish the fact, and the total period allotted on any one day for polling shall not be less than 8 hours. It is admitted that the polling hours in the constituency under consideration were between 7 A.M. and 5 P.M. with an interval of two hours. Under rule 17(2), the Presiding Officer at each polling station shall close it at the hour fixed in that behalf, and shall not admit thereto any elector after that hour; provided that all electors present within the polling station before it is so closed, shall be entitled to have their votes recorded. Therefore even if by any mischance polling had to commence at a later hour than that prescribed, with the result that all the voters assembled could not vote before the time fixed, the Presiding Officer had the discretion to extend the time of closing until all those electors who were present before the closing hour, had recorded their votes. So in the ordinary circumstances, a delay of an hour or two in the commencement of the polling need not necessarily lead to the voters going back without polling. It may entail only a little more extension of the time for closing which the presiding officer had authority to grant, so long as all the voters who had assembled before the closing hour alone are allowed to cast their votes.

12. In this case we have only the interested evidence of the petitioner and one of his active agents in regard to the matter of the late commencing of poll. No complaint about it was given then and there to any one in authority at the time of the counting of votes, nor was it mentioned in the petition filed after the counting was over. The interested evidence of the petitioner is controverted by the equally interested evidence of the first respondent that he found polling going on briskly at Vellore Town Hall booth at 7-30 A.M. It will not be proper to accept the above interested evidence, for a conclusion in this behalf. Further, the decided cases state that "the mere closing of the poll before the time due is not enough to warrant the setting aside of the election unless the result of the election is proved to have been materially affected by giving evidence. *Akyab West D.E.C. (Case No. 9)*" "The opening and closing of the poll at improper hours will not vitiate the election according to some English cases unless the election is shown to have been affected by the irregularity. *Limerick (1833) P. & K. 373*". In *Drogheda (1874) 20' M. & H. 201*, the polling station was opened 45 minutes later than the appointed time, but the election was not set aside because full opportunity to vote was given to the voters. Thus the test in such a case is whether the late commencing of the poll had materially affected the election or prevented the assembled voters from casting their votes. There is no satisfactory evidence on this point on behalf of the petitioner. We consider that the attack of the petitioner on this ground has not been sustained.

13. *Ground No. VIII.*—In the petitioner it was alleged first of all, that in the Saidapet Polling station which had two booths Nos. 142 and 143, parliamentary ballot papers were wrongly issued to Assembly voters, and secondly it was alleged, that such papers were taken into account for Congress candidates but rejected as invalid in respect of other candidates, including the petitioner. The second allegation involves an attack on the *bona fides* of the returning officer who made the counting of votes, and attributes to him bias in favour of the Congress candidates. But there was no evidence about such bias, and the petitioner's learned Counsel at the time of the hearing of arguments, very properly did not press the second portion of his contention about bias. But he contended that there was adequate data to show that in the two aforesaid booths, there was wrong issue of parliamentary ballot papers to voters for the Assembly, and that this had caused him prejudice because several voters who had to exercise their franchise in his favour, had to cast ballot papers which were ultimately declared invalid because they related to the parliamentary constituency, being hit by rule 47(1)(c). If such parliamentary ballot papers were issued either deliberately or through inadvertence, to voters for the assembly, it would no doubt be an irregularity of which due notice has to be taken. A scrutiny of the votes rejected in the above-mentioned booths, showed about 50 parliamentary votes cast for the petitioner at the Saidapet Polling Station. Exhibit A-3, a certified copy of the number of rejected votes for the *Parliamentary Constituency* in polling station No. 142, showed that

144 Assembly ballot papers were cast for the Parliamentary Constituency. Reinforced by this document, the petitioner's learned Council argued that there was a confusion in Saidapet polling station in the matter of issue of ballot papers, by those entrusted with the task. The petitioner in his evidence said that he had no personal knowledge of this irregularity but he heard about it from his agents at 5 P.M., and he could not specify who these agents were nor did he make a complaint about it immediately in writing. He mentioned this irregularity for the first time in the complaint which he gave to the Returning Officer on 11th January 1952 after the counting was over. P.W. 2 who was an agent for the petitioner at the Saidapet booth, said that the voting commenced there as usual at 7 A.M., that at 8 or 8-30 A.M., the Presiding Officer reprimanded some officers present, for wrongly distributing to voters Parliamentary ballot papers, that the polling was stopped, that about 60 voters were waiting, that himself and one Venkatarama Achari asked the polling officer about the votes already issued, that the polling officer said that those ballot papers would also be taken into account, that he was satisfied on that assurance, and that till that time about 100 Parliamentary votes had been wrongly issued. Venkatarama Achari above referred to, was an agent of the Communist candidate. He has not been examined to corroborate P.W. 2's evidence. P.W. 2 added in cross-examination that he could not say from personal knowledge that there was wrong issue of ballot papers, and he knew only from what the polling officer told him, and he could not say how the voters to whom wrong ballot papers were thus issued, voted. He could not specify who the polling Officer was who gave the information. On the other hand, the Court witness 1, the Election Deputy Tahsildar who visited on the day about 30 polling stations (not including Saidapet) deposed that there was no complaint of wrong issue of Parliamentary papers to Assembly voters in any of the booths which he visited.

14. While the evidence on the side of the petitioner about the wrong issue of Parliamentary papers to Assembly voters is meagre interested and largely hearsay, and not of a kind on which we can act with certainty for a conclusion that such an irregularity actually took place, on the other hand, the fact remains that at the Saidapet polling station Assembly papers were found in Parliamentary boxes and vice versa, as per the returns of the counting Officers. The attention of the Election Deputy Tahsildar was drawn to this circumstance. He gave two possible explanations for this result. One was an erroneous issue of Parliamentary ballot papers by the Clerk issuing Assembly papers. The other alternative was that the voters would not have used the Parliamentary papers at all, but handed them over outside to other voters, who might have surreptitiously cast such votes. When his attention was drawn to Exhibit A-3, he said that it is possible that there was wrong issue of Assembly papers for Parliamentary voters. It is no doubt an unfortunate feature of the present elections, that there is a possibility of such interchange of votes taking place, though we hasten to mention that the number of such interchanged votes in the case on hand constitutes only a minute fraction of the total votes cast. The total figure in the case of the petitioner has been reported to us to be 150 as against 22701 cast for him. In view of the evidence of the Election Deputy Tahsildar, we cannot entirely rule out the possibility of some misguided persons taking out their Parliamentary votes uncast, and trading them to illiterate voters. The illiterate voters unable to realise the distinction between the two constituencies, might have cast the improperly acquired votes indiscriminately in the Assembly boxes. If this is the real explanation for the irregularity, no machinery can be devised to circumvent it, because only the good sense of the average citizen will provide the safeguard. But on the other hand if there is a possibility that the arrangement of the boxes of the two constituencies, Assembly and Parliamentary, inside a given polling booth, was such that voters could by inadvertance cast the votes in the boxes of the wrong constituency, then adequate safeguards should be provided against such an error happening, howsoever limited in extent. However there is no evidence before us that there was such a defect in the arrangement at Saidapet booth, where the irregularity was noticed. P.W. 2 who was the agent at the booth, deposed that the voter as soon as he enters the polling station is given the Assembly vote by a Clerk. He casts it, then goes to another clerk, takes a Parliamentary ballot paper from him and then casts his vote. If this system had been correctly and uniformly followed, then the only two explanations for the irregularity are these given by the Election Deputy Tahsildar, namely, improperly dealing in votes, and wrong issue of ballot papers.

15. Assuming as the petitioner contends, that there was wrong issue of ballot papers in Saidapet polling station, we have next to consider whether such issue affected the petitioner adversely, and to a material extent, and vitiated the election of the 1st respondent. Account of the Parliamentary papers in the petitioner's boxes at Saidapet gave the number only as 50. The difference in the number of total valid votes for the entire constituency between the petitioner and the successful candidate is 721. The petitioner deposed that he heard complaints about the wrong issue of Parliamentary papers to Assembly voters only in regard to the Saidapet polling station and not in regard to any other polling station. So if the

ultimate cause is wrong issue of ballot papers, the petitioner was affected thereby only to the extent of about 50 votes. On the other hand, there were 100 more such votes found in other booths, and there is no evidence that they were due to wrong issue of ballot papers. They might have been cast as a result of the other cause mentioned by the Election Deputy Tahsildar, *viz.*, dealing in unused votes. If this cause operated in other polling booths, it may also have operated in the Saidapet booth. So we cannot specify that all the 50 Parliamentary votes cast at the Saidapet polling station was due to the wrong issue of ballot papers, even assuming there was such issue. In any event, the number of votes which the petitioner would have gained had there been no wrong issue would not exceed 50 and if that number had been covered by valid votes, it would not have materially affected the result of the election. In the absence of evidence it is unnecessary to speculate about the Parliamentary votes cast for the petitioner in the remaining polling stations.

16. We will take up next the alleged irregularities at the counting of the votes comprising the grounds of attack (i), (ii) and (iii), mentioned in paragraph 1 above. Form No. 14 which is the principal form of account of Ballot papers prepared after the counting of votes was over on 11th January 1952, does in fact show that 9,000 votes were rejected as invalid for the petitioner, while 1925 votes were so rejected for the 1st respondent. The result of the original counting was 23,422 votes in favour of the 1st respondent, the elected candidate, and 22,701 votes cast for the petitioner, who was thus defeated by a margin of 721 votes. In view of the allegation of the petitioner that the rejections were improper and irregular, we had to consider this portion of the case at length and in great detail. The petitioner attacked the method of counting, and alleged that while the rules provided for the opening of only one ballot box at a time for the purpose of counting, the returning Officer permitted 72 boxes to be opened at a time, employing about 70 to 80 Clerks for the counting, crowded in a single hall, and went on increasing their number as the counting proceeded, that 1,500 ballot boxes were thus opened and counted within a short space of 3 days, and that this procedure led to confusion. We may note in this connection that the petitioner did not protest about the mode of opening the boxes and counting, at any time while the process of counting went on from 9th January 1952, and even on 11th January 1952 when he gave a complaint after the counting was over, he only urged that due to the wrong issue of Parliamentary ballot papers instead of State Assembly ballot papers at Saidapet booth and in some other polling stations, a large number of votes that had come to his credit had been rejected and that this affected the result of the election. Any how, we felt bound to consider the objections of the petitioner raised in the course of the present proceedings, even though he did not raise them in the earliest petition submitted by him. The learned Government Pleader who assisted us in our enquiry referred to the fact that rule 46 (vi) originally provided "that one ballot box shall be opened at a time and the ballot papers counted, and then the same procedure was to be followed in respect of the other ballot boxes and the ballot papers contained therein," but this provision had been modified even before the counting took place, by an amendment which permitted more than one ballot box being opened at a time, with the restriction that only the ballot boxes of a particular candidate should be opened, before the ballot boxes of another candidate were opened, presumably to avoid confusion. As to the actual procedure at the time of counting, we have the evidence of the Election Deputy Tahsildar, C.W. 1, who was present throughout the counting, to the following effect:—"Each candidate had 251 boxes. They were taken in batches of 6 or 8, and checked for seals etc. There were 12 counting tables each entrusted with the counting of one box at a time, and the counting for each candidate was completed in 21 rounds. Each table had 5 clerks, counting the contents of one box." The clerks sitting at 12 tables thus finished the counting of 251 boxes in 21 rounds. There is nothing objectionable to this procedure as far as we can make out. Assuming that it will not be possible for a candidate to post an agent at each table, it would have sufficed on a reasonable view of things, for the candidate or his agent to go round the tables and keep watch from time to time, to see that nothing irregular took place.

17. The petitioner made certain further attacks in the course of his evidence, on the process of counting. He said that at the time of counting of the boxes of booth No. 126 Virupakshapuram, the counting clerk said that some serial numbers of other booths had got into the box of this booth, that the Returning Officer said "Count", and the clerk counted, and that this procedure struck the witness as an irregularity, as those votes should not have been counted. The Election Deputy Tahsildar (C.W. 1) said that there was no such complaint at the time of the counting, and he said that if such votes had been found in the boxes, they would have been invalidated. Then the petitioner deposed that in the case of double voting under Section 63 of the Act, it was possible that both the votes would have been counted. C.W. 1 said that this was impossible because the Returning Officer checked the contents in each box and invalidated the paper bearing the suffix "A" (double

vote). The petitioner then alleged that invalid votes were not endorsed as rejected, in his presence, that the counting clerks put them in separate covers, that the returning officer merely noted them, and that even on the third day, the returning officer had not made the endorsement "Rejected" on the invalid votes. This allegation was denied by C.W. 1. C.W. 1 deposed that the checking officer at each table used to take the entire contents to the returning officer who made a check and then endorsed on the invalid votes then and there about the invalidity and initialled them. He used to note on each rejected vote the cause of the rejection whether it was hit by section 47(1)(c) (if it, bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth), or by Section 63 (putting both the votes intended for the general constituency and the reserved constituency respectively, in the box of one candidate, in which case only one of the two votes has to be treated as valid). We are of the opinion that this objection also has not been substantiated.

18. The petitioner then alleged that the ballot boxes of one Sri Srinivasan which ought to have been counted after the petitioner's boxes were counted before. We do not see how this would have prejudiced the petitioner in any way.

19. The learned Counsel for the petitioner made a further and more elaborate attack on the election and the method of counting adopted, and the consideration of this gave us a great deal of time and trouble, and also made us decide upon a recounting of the votes cast for the petitioner and the first respondent. After the counting was over, the returning officer prepares an account in form No. 14 which gives, in a number of columns, the name of the polling station the number of the polling booth, and the number of valid ballot papers in the ballot box. The results are totalled up to show the number of valid votes recorded in ballot papers contained in the ballot boxes, the total number of valid votes recorded on postal ballot papers and the total votes polled. On the basis of form No. 14, the returning officer prepares the return of election in Form No. 16, giving the total number of valid votes, the total number of invalid votes, the total number of tendered votes, along with the "result of the verification referred to in rule 49 of the Representation of the People Act Rules 1951". In the present case, the result of the verification referred to in rule 49, has been entered in a manuscript form. The verification contemplated in rule 49, is this. At each polling station after the voting is over, the presiding Officer prepares an account of the ballot papers in form No. 10. This account gives the number of ballot papers actually used out of those received, the number cancelled, the number of tendered ballot papers, the number of ballot papers in ballot boxes and the number of unused ballot papers returned. After the counting is over, the returning officer is required to make a check of the No. 14 account with the No. 10 accounts and note the result of the verification in the last column of the account of verification. The account of verification in the present case shows that in a considerable number of cases No. 10 accounts were not received by the returning Officer at the time when verification was made. In some cases the verification showed that the number of votes as recorded in form No. 14, was in excess of the number of votes issued as per No. 10 account. In several other cases the number as recorded in form No. 14 was less than the number of votes polled as per No. 10 account, and these were explained as due to non-polling. But the finding of excess ballot papers in the boxes over what had been issued presented an initial difficulty. Seeing that form No. 14 provides for the entry only of valid papers in the ballot boxes, we had to look for an explanation as to how the number of valid ballot papers in form No. 14 account, could exceed the number of votes issued as per No. 10 account. The Election Deputy Tahsildar stated that in the verification account, the total entry in form No. 14, included both valid and invalid votes. If this explanation is correct, then there could be excess of votes in the ballot boxes over the votes issued, if the voters had cast the votes issued in other booths or votes issued for the Parliamentary constituency. But it is found that the heading in the column in Form 14 provides for entering only valid ballot papers found in the ballot boxes. So we felt in the first place that the explanation given by C.W. 1 should be tested by examining the votes cast once again. Secondly, the admitted fact that No. 10 accounts were not before the counting Officer for several polling stations at the time he prepared the account of the result of the verification, indicated that a complete verification might not have been made with reference to the necessary accounts, and as prescribed under the rules. Bearing these circumstances in mind and also taking into account the fact that the margin between the petitioner and the elected candidate is fairly narrow, viz., 721 votes, we considered it proper, in the interests of justice, to order a recounting of the votes in the presence of counsel on both sides under the supervision of the Chairman of the Tribunal, with the assistance of the Tahsildar of Vellore and the Personal Assistant to the District Collector, Vellore, and to give our decision in the case after such recounting.

20. The recounting showed that the actual totals arrived at the recounting were not different in a substantial manner from the figures arrived at the first counting. 4 votes had to be added to the petitioner and 2 votes to the first respondent, because such votes had been rejected as invalid for being cumulative, while they should not have been so rejected. Further, 1 vote for each of the petitioner and the first respondent had been wrongly validated, but they should have been invalidated. The result of the recounting showed that 94 more votes had to be rejected as invalid for the first respondent and 64 votes had to be rejected for the petitioner, on account of being cumulative. After allowing for the above modifications, the recounting gave two figures, 23,249 votes for the first respondent as against 22,632 votes for the petitioner with a margin of 617 votes in favour of the first respondent.

21. Another circumstance noticed in the bearing serial numbers outside the series of booths (specified in enclosures D-1 and D-2) included in the original counting as valid votes. Since this has affected both the petitioner and the 1st respondent, and since this has not materially affected the result of the election, it is unnecessary to speculate about the cause. The number of such votes is 260 for the first respondent and 851 for the petitioner. So, even if these ballot papers are rejected under Rule 47(1)(c), the result would be 22,989 votes for the first respondent and 21,781 votes for the petitioner leaving a difference of 1,208. To the above figures 14 postal votes have to be added in the case of the petitioner.

22. Learned Counsel for the petitioner, as a final argument urged that the finding of some of the individual packets, unsealed, and the interchange of the votes between the booths mentioned in the previous paragraph, and the non-polling of some votes in particular booths would indicate that the procedure at the election had been vitiated in one way or other, which however he was not able to specify. We consider that this objection is without substance.

23. It is clear that as a result of the recounting which has been done with every care possible and under the supervision of the Chairman of the Tribunal, and in the presence of the parties, the first respondent will in any event be left with a margin exceeding 600 votes in his favour, over the petitioner. Therefore, we hold that the respondents 1 and 2 have been rightly declared elected and that their elections need not be declared void.

24. Considering the magnitude of the task involved, it is a matter for gratification, that the results of the recounting tallied with the first counting within a narrow margin of difference, which we consider to be of little significance. We would like to commend the thoroughness and fair accuracy, with which the first counting had been carried out by the Returning Officer and his staff.

25. Before we conclude this case, we would like to comment on the system adopted for recording votes in plural member constituencies, according to Section 63 of the Representation of the People Act. In the case before us, it led to the recording of a large number of invalid votes, as many as 9000 in the case of the petitioner, 1925 in the case of the first respondent, and a considerable number in the case of other respondents. On a calculation, the total comes to 27,071 votes, which must be considered to be a large number, against the total number of votes polled by all the candidates, 1,67,000. It works out to a proportion exceeding 16 per cent. We expect that a similar result would have been experienced in other constituencies. In practice, provision for voting in plural constituencies is made, by issuing to voters ballot papers bearing a particular number along with other ballot papers bearing the number and an alphabetical suffix, the number of votes issued being as many as there are members to be elected in the plural constituencies. The elector thus provided with a plurality of votes, has to put one vote in one box, but if by inadvertence or by design he puts more than one vote in one box, Section 63(2) is applied at the time of counting, only one vote becomes valid, and the remaining votes are declared invalid. The result has led to an enormous number of invalid votes. It might be called succinctly an avoidable "wastage of the franchise right". Where the voters by design cast more than one vote in a box nobody need be worried about the result. But if the voters, many of whom are illiterate, do it by inadvertence it will be very desirable to devise a better machinery which would prevent such a wastage. We would like to draw the attention of the authorities concerned to this point.

26. Another difficulty we experienced was the absence of a standardised form for the verification provided in Rule 49 of the Representation of the People Act. In Form No. 16 a Column is provided for entering the result of such verification. The Returning Officer in this case has prepared a manuscript form for the purpose

of such verification, but the circumstance that some of the Columns in this manuscript form had not been properly filled, either because of the non-receipt of accounts in Form No. 10 in time, or because defective particulars were adopted in filling up the Columns in the manuscript form, led to a great deal of argument before us. We must observe that the defects in the verification account, did not in any way handicap either the counting or the recounting. To obviate difficulties which we notice, it would be advisable to prescribe a standardised form for the verification provided in Rule 49.

27. In view of the foregoing discussion, we find Issues 1 to 3 against the petitioner and hold that the election of respondents 1 and 2 is valid and proper. The objection taken in Issue 4 has been met by the subsequent ratification by the Election Commission of the delay in filing the Return of Election Expenses. The petition is, therefore, dismissed. As regards costs, since we held on *prima facie* grounds that a recounting was called for, and the same has been done at the expense of the petitioner at a cost of over Rs. 200, it will suffice to meet the ends of justice if the petitioner is directed to pay the costs of the Government Pleader, which we fix in a sum of Rs. 100. In other respects, the petitioner and the contesting respondents will bear their own costs.

Pronounced in open Court, this, the 18th day of February, 1953.

(Sd.) M. ANANTANARAYANAN, Chairman.

(Sd.) P. RAMAKRISHNAN, Judicial-Member, and

(Sd.) B. V. VISWANATHA AIYAR, Advocate-Member.

(Bill of costs not filed by either side).

PETITIONER'S WITNESSES:

1. R. RADHAKRISHNAN, Petitioner.
2. PONRANGA GOUNDAR.
3. V. K. KRISHNAMOORTHI.

RESPONDENT'S WITNESS:

1. A. K. MASILAMANI CHETTIAR (first respondent).

COURT WITNESSES:

1. K. V. VENKATA SUBBIAH.
2. R. YEGNANARAYANA IYER.

PETITIONER'S EXHIBITS:

- A-1. 11-1-1952. Petition given by R. Radhakrishnan to the Returning Officer, Vellore, Assembly Constituency.
- A-2. 11-1-1952. Petition given by R. Radhakrishnan to the Returning Officer, Vellore, Assembly Constituency.
- A-3. Certified copy of the list of rejected votes in booth No. 1 of Polling Station No. 142 of Vellore Parliamentary Constituency.

RESPONDENT'S EXHIBIT:

- B-1. Rejected vote No. M.D. ^A 293440 of booth No. 126 of Vellore Assembly constituency.

(Sd.) M. ANANTANARAYANAN, Chairman.

[No. 19/50/52-Elec-III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.